

## ACCESS TO INFORMATION

Appeal from Federal Court decision (2017 FC 330) dismissing appellant's application for judicial review under *Access to Information Act*, R.S.C., 1985, c. A-1, s. 41 — Back in 2007, appellant requesting certain documents from Access to Information Division (ATIP Division) of Department of Public Safety and Emergency Preparedness (Department), which documents included work plan, budget breakdown, staffing activities, etc. of recently announced Correctional Services Canada (CSC) Independent Review Panel (CSC Review Panel) — Panel established by respondent for purpose of assessing operational priorities, strategies, business plans of CSC — ATIP Division directing Department to locate relevant records therein but search not producing any relevant records — Appellant, dissatisfied with response, filing complaint with Office of Information Commissioner (OIC) — OIC informing appellant that complaint not substantiated, that Department not possessing records responsive to request but that CSC might possess relevant documents — However, appellant not filing separate request to CSC but instead filing application for judicial review of decision at issue — Alleging that respondent had control of requested documents; as such, could compel their disclosure — Also submitted that Act, s. 8 imposing on respondent obligation to transfer appellant's request from Department to CSC; that by failing to do so respondent not assisting appellant as required under Act, s. 4(2.1) — Federal Court finding no evidence suggesting that Department erroneously stating not holding responsive records — Also rejecting appellant's "portfolio argument" finding that Department, CSC listed as separate government institutions under Act, Schedule 1 — Federal Court further finding that Department having no obligation to transfer appellant's request to CSC under Act, s. 8 since Department never having control over requested records; thus Act, s. 8 never triggered — Whether Federal Court erring in dismissing appellant's judicial review — Federal Court's conclusion that Department not having control over records consistent with Supreme Court of Canada decision in *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, [2011] 2 S.C.R. 306 determining that government institution under Act not including office of Minister who presides over it — Appellant confusing ministerial accountability for particular portfolio with manner by which Parliament determining that government records should be organized for public access — Act granting authority for handling access requests to various government institutions listed under Act, Schedule I, not to Minister accountable for particular portfolio — Department cannot be held to have control of requested records on basis records might exist at CSC — Therefore appellant's "portfolio argument" failing — However, Federal Court's conclusion that government institution must control requested documents as prerequisite to engaging Act, s. 8 unfounded — Act, s. 8 setting forth requirements for transferring request for access to record under Act from government institution to another — Under Act, s. 8, if government institution receiving request for access, it may "if necessary"/"au besoin" further transfer requested record when transferring request — Language of s. 8 ("if necessary"/"au besoin") not making "control of a record" by government institution requirement for valid transfer of request for access — Moreover, control requirement in Act, s. 8 frustrating timely, efficient transfer of request for access from one institution to another — Thus, in absence of express language regarding "control", requirements for transfer of request for access set forth in s. 8 may be engaged regardless of whether government institution having control of record — In present case, necessary to consider reasonableness of Department's discretionary decision not to transfer appellant's request — Given specific circumstances herein, on careful review of record, Department's decision not to transfer appellant's request for access justified on reasonableness standard of review — Still open to appellant to file separate request to CSC for requested documents despite passing of time since original request filed — Finally, regarding appellant's argument regarding Department's duty to assist pursuant to Act, s. 4(2.1) provision in question only coming into force several months after appellant's request refused — Presumption that legislation not meant to be applied retroactively unless such

construction expressly or by necessary implication required by language of Act applicable here — Appeal dismissed.

YEAGER V. CANADA (PUBLIC SAFETY AND EMERGENCY PREPAREDNESS) (A-139-17, 2019 FCA 98, Boivin J.A., reasons for judgment dated April 25, 2019, 10 pp.)